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In the Supreme Court of the United States

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY, PETITIONER

v.

PAULINE THOMAS

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Title II and Title XVI of the Social Security Act provide that "disability" is the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. 423(d)(1)(A); 42 U.S.C. 1382c(a)(3)(A). Titles II and XVI of the Act further provide that a claimant "shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists" in "significant numbers" in "the national economy." 42 U.S.C. 423(d)(2)(A); 42 U.S.C. 1382c(a)(3)(B). The question presented is:

Whether the Commissioner of Social Security may determine that a claimant is not "disabled" within the meaning of the Act because the claimant remains physically and mentally able to do her previous work, without determining whether that previous work exists in significant numbers in the national economy.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 294 F.3d 568. The opinion and order of the district court (Pet. App. 24a-34a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 21, 2002. On September 10, 2002, and October 15, 2002, Justice Souter extended the time within which to file a petition for a writ of certiorari to and including October 21, 2002, and November 18, 2002, respectively. The petition was filed on November 18, 2002, and was granted on February 24, 2003. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Social Security Act, 42 U.S.C. 401 *et seq.*, and implementing regulations, 20 C.F.R. Pts. 404 and 416, are set forth in the appendix to the petition, Pet. App. 55a-116a.

STATEMENT

Title II of the Social Security Act (the Act), 42 U.S.C. 401 *et seq.*, provides for the payment of insurance benefits to disabled workers. Title XVI of the Act, 42 U.S.C. 1381 *et seq.*, provides for the payment of Supplemental Security Income (SSI) benefits to disabled individuals if they satisfy certain financial need requirements. This case concerns the showing necessary to establish a "disability" under those programs. In particular, it presents the question whether the Commissioner of Social Security may find that a claimant is not disabled because she retains the physical and mental capacity to do a job she previously held, without inquiring whether that previous work exists in significant numbers in the national economy.[1]

A. The Statutory And Regulatory Framework

1. As enacted in 1935, Title II of the Social Security Act provided benefits for covered workers who retired at age 65, but made no provision for "a lower retirement age for those who are demonstrably retired" before age 65 "by reason of a permanent and total disability." H.R. Rep. No. 1189, 84th Cong., 1st Sess. 3 (1955). To the contrary, as the program was originally constituted, a covered worker's right to benefits upon retirement could be "impaired or * * * lost entirely when workers ha[d] periods of total disability before reaching retirement age." S. Rep. No. 1987, 83d Cong., 2d Sess. 20 (1954); H.R. Rep. No. 1698, 83d Cong., 2d Sess. 22

[1] Responsibility for administering Titles II and XVI of the Act was previously vested in the Secretary of Health and Human Services. In 1994, the Social Security Administration was made an independent agency, headed by the Commissioner of Social Security. See Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, §§ 101-106, 108 Stat. 1465-1477. For the sake of consistency, this brief uses the term "Commissioner" to include the Commissioner of Social Security and all predecessor officers responsible for administering the disability programs.

(1954). To address that concern, Congress in 1954 enacted a program to "freeze * * * old-age and survivors insurance status during" any "extended" period of "total disability." S. Rep. No. 1987, *supra*, at 20; H.R. Rep. No. 1698, *supra*, at 22; see Social Security Amendments of 1954, ch. 1206, § 106, 68 Stat. 1079, 1080.

The resulting "disability freeze" provisions of the Act defined "disability" (in relevant part) as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or" last the specified duration. § 106, 68 Stat. 1080. The accompanying House and Senate Reports expressed the expectation that the standards established by the Commissioner "will reflect the requirement that the individual be disabled not only for his usual work but also for any type of substantial gainful activity." S. Rep. No. 1987, *supra*, at 21; H.R. Rep. No. 1698, *supra*, at 23. Implementing that program, the Commissioner's 1955 *Disability Freeze State Manual* explained that, because the inability to engage in substantial gainful activity had to be "by reason of his impairment," an individual would be disabled only if the impairment was "the cause of inability to work." *Disability Freeze State Manual* § 314.A (May 16, 1955).[2] A freeze in status thus was not granted to individuals who were "unemployed by reason of economic conditions" or "unavailability of jobs." *Ibid.*

Two years after establishing the disability freeze program, Congress created the Title II disability insurance program at issue here to provide monetary benefits to covered workers during extended periods of total disability. See Social Security Amendments of 1956, ch. 836, § 103, 70

[2] The *Disability Freeze State Manual* was lodged with this Court in *Bowen* v. *Yuckert*, No. 85-1409. Consistent with Supreme Court Rule 32.3, another copy will be lodged with the Court upon request. A copy has been served on respondent.

Stat. 815. The new insurance program used the same definition of "disability" as the disability freeze program. See 42 U.S.C. 423(d)(1)(A).

The Commissioner's regulations implementing the disability insurance program, consistent with the disability freeze program, differentiated between consideration of the claimant's capacity to perform her "prior" work and her capacity to perform "any other kind" of work, but required that it be the impairment that prevents the claimant from doing either. The 1960 regulations, for example, provided that a claimant must show "not only that he is incapable of performing his prior, usual or regular work, * * * but also that he does not have the capacity to engage in any other kind of substantial gainful work, taking into account his age, education, experience and skills." 25 Fed. Reg. 8100 (1960) (codified at 20 C.F.R. 404.1502(b) (1961)). The regulations continued:

> The physical or mental impairment must be the *primary reason* for the individual's inability to engage in any substantial gainful activity. Where, for instance, an individual remains unemployed for a reason or reasons not due to his physical or mental impairment but because of the hiring practices of certain employers, *technological changes in the industry in which he has worked*, or local or cyclical economic conditions, such individual may not be considered under a disability.

Ibid. (emphases added). See, *e.g.*, *May* v. *Gardner*, 362 F.2d 616, 618 (6th Cir. 1966) (discussed at p. 19, *infra*).

In 1967, Congress amended the Act by adding 42 U.S.C. 423(d)(2)(A). See Social Security Amendments of 1967, Pub. L. No. 90-248, § 158(b), 81 Stat. 868; *Bowen* v. *Yuckert*, 482 U.S. 137, 147-148 (1987). Section 423(d)(2)(A) provides that, "[f]or purposes of paragraph [(d)](1)(A)":

> An individual shall be determined to be under a disability *only if* his physical or mental impairment or impairments are of such severity that he is *not only unable to do his previous work* but cannot, considering his age, education, and work experience, *engage in any other kind of substantial gainful work which exists in the national economy*, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work.

42 U.S.C. 423(d)(2)(A) (emphases added). "[W]ork which exists in the national economy" is defined by Section 423(d)(2)(A) to mean "work which exists in significant numbers either in the region where such individual lives or in several regions of the country." The accompanying Senate and House Reports indicate that Section 423(d)(2)(A) was enacted in response to judicial decisions that had expanded the disability program by emphasizing the individual's ability to *obtain* employment in the job market, rather than the individual's functional (physical or mental) *capacity* to work. See, *e.g.*, S. Rep. No. 744, 90th Cong., 1st Sess. 47-48 (1967). Section 423(d)(2)(A) accordingly "reemphasize[s] the predominant importance of medical factors" rather than job-market considerations "in the disability determination." *Id.* at 48.

Congress amended the Social Security Act again in 1972 by adding Title XVI to provide SSI benefits to financially needy persons who are aged, blind, or disabled. See Social Security Amendments of 1972, Pub. L. No. 92-603, Tit. III, § 301, 86 Stat. 1465; *Yuckert*, 482 U.S. at 140. In enacting Title XVI, Congress incorporated the definition of "disability" used in Title II. See 42 U.S.C. 1382c(a)(3)(A) and (B).

2. The Social Security Act directs the Commissioner to "adopt reasonable and proper rules and regulations to regu-

late and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits," 42 U.S.C. 405(a), as well as "written guidelines" for benefits determinations, 42 U.S.C. 421(a)(2) and (c), 1383b(a).[3] As explained above, the Commissioner's guidelines and regulations required at the outset that the claimant's impairment (rather than factors such as economic conditions) prevent the claimant from performing her prior work, and that the impairment (rather than such other factors) prevent the claimant from performing any other type of substantial gainful activity. See p. 4, *supra*. After Congress added Section 423(d)(2)(A) in 1967, the Commissioner's regulations retained those requirements. See 33 Fed. Reg. 11,749, 11,751 (1968) (codified as 20 C.F.R. 404.1502(b) (1969)); see also p. 39, *infra*.

The Commissioner comprehensively revised the regulations in 1978 to formalize a five-step sequential evaluation process for adjudicating disability claims. 43 Fed. Reg. 55,363 (1978); see *Heckler* v. *Campbell*, 461 U.S. 458, 461 (1983); *Cleveland* v. *Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 804 (1999); *Yuckert*, 482 U.S. at 140-142. In doing so, the Commissioner retained the requirement that the impairment rather than some other cause prevent the claimant from performing her prior work.

Under the five-step process, a claimant may be found disabled or not disabled at various points; once that occurs, the evaluation does not proceed further. 20 C.F.R.

[3] The Act provides that the initial disability determination may be made by a state agency "acting under the authority and supervision of" the Commissioner. *Yuckert*, 482 U.S. at 142; see 42 U.S.C. 421(a) and (c), 1383b(a). If the state agency finds the claimant not disabled, the claimant may obtain a formal hearing before an Administrative Law Judge (ALJ) in the Social Security Administration (SSA) and review of the ALJ's decision by SSA's Appeals Council. 42 U.S.C. 405(b); 20 C.F.R. 404.929, 416.1429; *Sims* v. *Apfel*, 530 U.S. 103, 105 (2000).

404.1520(a), 416.920(a). Steps one through three focus on whether (1) the claimant is currently working, (2) the impairment is sufficiently severe to be potentially disabling, and (3) the impairment or combination of impairments is (or is equivalent to) a "listed" impairment presumed to be so severe as to preclude any gainful activity.[4]

Step four focuses on the claimant's physical and mental ability to do her past work, while step five focuses on the claimant's ability to do other work. At step four, the Commissioner reviews the claimant's "residual functional capacity and the physical and mental demands of the work [the claimant] ha[s] done in the past." 20 C.F.R. 404.1520(e), 416.920(e). If the claimant "can still do this kind of work," the Commissioner will find that the claimant is "not disabled." *Ibid*; accord 20 C.F.R. 404.1560(b), 416.960(b) ("If you still have the residual functional capacity to do your past relevant work," the Commissioner "will determine that you are not disabled without considering your vocational factors of age, education, and work experience."). The regulations governing step four do not provide for a determination whether the claimant's past work exists in significant numbers in the national economy.

[4] At step one, the Commissioner asks whether the claimant is currently engaging in substantial gainful activity; if so, the claimant is not disabled. 20 C.F.R. 404.1520(b), 416.920(b). At step two, the Commissioner asks whether the claimant has a "severe impairment * * * which significantly limits" the claimant's "ability to do basic work activities" such as lifting, standing, and walking, 20 C.F.R. 404.1520(c), 416.920(c); if the impairment or combination of impairments is not that severe, the claimant is not disabled. *Ibid.* At step three, the Commissioner determines whether the claimant's impairment or combination of impairments is on a list of impairments that are presumed to prevent any gainful activity (or is equal in severity to a listed impairment). 20 C.F.R. 404.1520(d), 416.920(d). If the claimant has such an impairment, she is deemed disabled without further inquiry. *Ibid.*

If the claimant is unable to do "any work [she] ha[s] done in the past because [she] ha[s] a severe impairment," the Commissioner proceeds to step five and determines whether the impairment prevents the claimant "from doing any other work." 20 C.F.R. 404.1520(f), 416.920(f); see also 20 C.F.R. 404.1561, 416.961. At step five, the Commissioner considers the claimant's "residual functional capacity" and "age, education, and work experience" to see if the claimant "can do any other work." *Ibid.* By "other work," the Commissioner "mean[s] jobs that exist in significant numbers in the national economy." 20 C.F.R. 404.1560(c), 416.960(c).

The Commissioner's construction is also embodied in a formal Social Security Ruling (SSR) issued in 1982. Addressing the relevance of a claimant's past work in foreign countries, the Commissioner explained in SSR 82-40 that it is not necessary to determine whether a claimant's past work exists in the United States economy:

> If a claimant can meet the sitting, standing, walking, lifting, manipulative, intellectual, emotional and other physical and mental requirements of a past job, he or she is still functionally capable of performing that job regardless of the fact that the individual no longer resides in the country where the past work was performed.

SSR 82-40 (1982) (*available in* 1982 WL 31388, at *2). "It is only after a claimant proves that he or she is not able to do his or her previous work [wherever located] that the burden shifts to the [Commissioner] to show that there is work available in the U.S. national economy which the claimant can do (the fifth and last step of the sequential evaluation process)." *Ibid.* The Commissioner explained that Section 423(d)(2)(A) "does not qualify 'previous work' but does specify that 'other . . . work' must exist in significant numbers in the national economy." *Ibid.*; see pp. 27-28, *infra*.

B. Proceedings In This Case

1. Respondent worked as a housekeeper until 1988, when she had a heart attack. Respondent then worked as an elevator operator until she was laid off on August 25, 1995, when her position was eliminated. In June 1996, at age 53, respondent applied for disability benefits under Title II and Title XVI, citing heart and back conditions. Pet. App. 25a; Pet. 9. Respondent's claim was denied on initial review, Pet. App. 50a-54a, and again on reconsideration, *id.* at 46a-49a.

Respondent then requested a hearing before an Administrative Law Judge (ALJ), who likewise found that she is not disabled. Pet. App. 38a-45a. The ALJ noted that, although respondent claimed that she was disabled in part by hypertension and cardiac arrhythmia, respondent's cardiologist concluded that she was "doing well without chest pain or shortness of breath," and "was not disabled." *Id.* at 40a; see *id.* at 29a (cardiologist "found no evidence of organ damage" and "characterized [respondent's] physical examination as 'unremarkable'"). The ALJ also found that, although respondent claimed that she had suffered a stroke in August 1997, that "appear[ed] to be an exaggeration." *Id.* at 43a. The hospital records showed that respondent had "a transient ischemic attack," *ibid.*, an episode that "usually lasts two to thirty minutes, but * * * then abates without persistent neurologic abnormalities," *id.* at 25a n.5. "Upon discharge, [respondent] was allowed to resume normal activities." *Id.* at 43a. Finally, the ALJ did not believe that respondent was disabled by lower back pain or a right ankle fracture she allegedly sustained in July 1996. *Id.* at 42a. Respondent had not provided medical records to show that a fracture had occurred, and "[t]he fact that [respondent] does not take any pain relievers except, perhaps, Ecotrin, tends to contradict her allegation of limiting pain from either the ankle or the back. Further, the ankle fracture should have healed in far less than 12 months." *Id.* at 42a-43a.

The ALJ observed that, "based on the evidence in the record, there is considerable question as to whether there is even a 'severe' impairment" that would allow respondent's case to proceed beyond the second step of the five-step sequential evaluation process. Pet. App. 42a; see pp. 6-7 & note 4, *supra*. Nonetheless, the ALJ ultimately found that respondent was not disabled at step four of that process, because her claimed impairments would not prevent her from performing her previous work. Specifically, the ALJ found that respondent "retains the functional capacity for work through at least a light level of exertion," and thus "retains the functional capacity to return to past work as an elevator operator." Pet. App. 43a; see *id.* at 44a-45a ("The claimant has the residual functional capacity to perform work-related activities except for perhaps medium and heavy lifting and extensive bending and stooping. * * * The claimant's past relevant work as an elevator operator did not require the performance of work-related activities precluded by the above limitations.").

The ALJ rejected respondent's objection that, in view of the possibility that the job of elevator operator no longer exists in significant numbers in the national economy, the evaluation should proceed to step five for consideration of whether there is "other work" she can do. 20 C.F.R. 404.1520(f), 416.920(f); see Pet. App. 43a-44a. Relying on SSR 82-40 (discussed at p. 8, *supra*), the ALJ explained that, at step four, the Commissioner's regulations require only a determination of the claimant's physical and mental capacity to meet the demands of a past job, and that there is no requirement for the ALJ to find that the particular job exists in significant numbers in the national economy. Pet. App. 43a. "If the claimant can meet the sitting, standing, walking, lifting, * * * and other physical and mental requirements of a past job, she is capable of performing that job. It is only after the claimant has proved that she cannot

do her previous work that the burden shifts to the Commissioner and the vocational rules are applied." *Id.* at 43a-44a.

The Social Security Administration's Appeals Council denied respondent's request for review. Pet. App. 35a-37a.

2. The district court affirmed. Pet. App. 24a-34a. After reviewing respondent's claimed impairments in detail, the district court concluded that "there was no evidence to support [respondent]'s claim that heart problems prevented her from performing her work," *id.* at 29a; "no evidence to support [respondent's] claim that lumbar radiculopothy, a nerve root disorder * * * , prevented her from performing her past work," *id.* at 30a; "no indication that [respondent]'s transient ischemic attack prevents her from performing her past work," and no "medical evidence to support her claim of musculoskeletal problems," *ibid.*[5]

The district court rejected respondent's argument that, because "she no longer has the option to work as an elevator operator," her ability to perform her past job is irrelevant. Pet. App. 31a; see *id.* at 31a-32a. "Disability insurance," the court explained, "provides for people who physically are incapable of performing the type of job they did in the past[;] it does not provide for people who lost their job." *Id.* at 28a.

3. a. Sitting en banc, a divided court of appeals reversed. Pet. App. 1a-23a. The court first concluded that the language of the Act precludes the Commissioner from finding a lack of disability based on the claimant's physical and mental

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[5] The district court rejected respondent's claim that the ALJ should not have disregarded a two-sentence letter from her treating physician, which stated that respondent is disabled. Pet. App. 32a. The court explained that the physician "did not provide any laboratory or clinical evidence to support the assertion that [respondent] was disabled," and that the assertion was contradicted by "other physicians [who] found [that respondent] was able to work," and by the absence of "hospital records indicating that [respondent] has any functional limitations." *Id.* at 32a, 33a.

capacity to perform her "previous work," unless that previous work exists in significant numbers in the national economy. *Id.* at 8a. Section 423(d)(2)(A), the court observed, provides that a claimant "shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." *Id.* at 7a (emphasis omitted). In the court's view, "[t]he phrase 'any other' * * * makes clear that an individual's 'previous work' was regarded as a type of 'substantial gainful work which exists in the national economy.'" *Id.* at 8a. "This feature of the statutory language," the court concluded, "is unambiguous." *Ibid.*

The court of appeals also believed that, even if the "statutory language were ambiguous," the contrary construction would lead to "absurd results." Pet. App. 9a. The court perceived "no plausible reason why Congress might have wanted to deny benefits to an otherwise qualified person simply because that person, although unable to perform any job that actually exists in the national economy, could perform a previous job that no longer exists." *Ibid.* The court therefore concluded that, if respondent "can show that elevator operator positions really are obsolete," the ALJ must "proceed[] to Step Five of the sequential evaluation to ascertain whether [respondent's] medical impairments prevent her from engaging in any work that actually exists." *Id.* at 11a-12a.

The court rejected the Commissioner's position that requiring a claimant's previous job to exist in significant numbers "would convert disability benefits into unemployment benefits." Pet. App. 12a. The court likewise was unmoved by the administrative burden created by its construction. The court acknowledged that the inquiry into the

claimant's previous work "was designed to facilitate the determination of whether a claimant has the capacity to work, because it is easier to evaluate a claimant's capacity to return to a former job than to decide whether any jobs exist for a person with the claimant's impairments and vocational background." *Ibid.* And the court accepted the proposition that, "in the vast majority of cases, a claimant who is found to have the capacity to perform her past work also will have the capacity to perform other types of work." *Id.* at 12a-13a n.5. Nevertheless, the court concluded that, contrary to the regulatory framework, consideration of whether a claimant's particular past job exists in the national economy should be considered at step four of the sequential evaluation process. *Id.* at 15a-16a. The court of appeals acknowledged that its decision is inconsistent with the decisions of four other circuits. See Pet. App. 8a n.2, 14a.

b. Judge Rendell, joined by Judges Sloviter and Roth, dissented. Pet. App. 17a-23a. In their view, the text of Section 423(d)(2)(A) "requires that disability be based on an initial finding that an individual is 'unable to do his previous work,'" without a determination of whether that work exists in significant numbers in the national economy. Pet. App. 17a. Only "[i]f that condition is met" does the inquiry move on to whether a claimant has "the ability to engage in 'any other kind of substantial gainful work which exists in the national economy.'" *Ibid.*

The majority reached the contrary result, the dissent stated, by "rewriting the statute" and "engraft[ing]" a new requirement onto the otherwise "perfectly clear first requirement" that the claimant be "unable to do his previous work." Pet. App. 17a. The dissent explained that, consistent with the Act, "Step Four is not an inquiry into employability or employment opportunity, but, rather, it is an inquiry into *physical capacity*." *Id.* at 18a (citing *Pass* v. *Chater*, 65 F.3d 1200, 1204 (4th Cir. 1995)). In the dissent's view, the

majority's interpretation represents a radical change in the regulatory regime that will "wreak havoc with the evidentiary aspects of the administrative process." *Ibid.*

The dissent also rejected the majority's suggestion that the Commissioner's construction would lead to absurd results, finding it "quite plausible that Congress decided that if a claimant still retained the physical and mental capacity to do whatever work she previously did, the inquiry should end there with a finding that claimant is not disabled." Pet. App. 19a. Under the statutory framework, the dissent reasoned, "[p]revious work essentially serves as a proxy for the ability to perform work, not as proof that the claimant can be employed in that particular job." *Ibid.* "[T]he point at Step Four is not that [the claimant] can actually be employed in her past job, but that she is able to do a certain level of work. If Congress and the regulatory body charged with implementing the statutory scheme have determined that [such a claimant] should not be considered 'disabled' if she still has the ability, physically and mentally, to do what she had previously done," the dissent concluded, it is not for the courts to "graft additional requirements on the statutory and regulatory scheme." *Id.* at 23a.

SUMMARY OF ARGUMENT

A. The Commissioner of Social Security has long construed the term "disability" in 42 U.S.C. 423(d) to require that the claimant have a physical or mental impairment that precludes her from doing her former work, without any further inquiry into whether that former work exists in significant numbers in the national economy. Under this Court's cases, that construction of the Act is entitled to substantial deference, particularly in view of the complexity of the statutory scheme and the Commissioner's expertise. Such deference is further warranted where, as here, the Commissioner's construction dates from the program's earliest days.

B. 1. The Commissioner's construction is supported by the Act's text. Since the disability insurance program's inception in 1956, the Act has provided that "disability" means the "inability to engage in any substantial gainful activity *by reason of* any medically determinable physical or mental impairment" of the requisite severity and duration. 42 U.S.C. 423(d)(1)(A) (emphasis added). Construing and implementing the causation requirement imposed by the phrase "by reason of," the Commissioner has always required that it be the *impairment* rather than a factor such as technological change that disables the claimant both for his usual work, and for any type of substantial gainful activity.

The court of appeals did not question that construction of the "by reason of" requirement in Section 423(d)(1)(A). Instead, it held that 42 U.S.C. 423(d)(2)(A) precludes the Commissioner from denying benefits based on a claimant's physical or mental capacity to do her former job unless that job exists in significant numbers in the national economy. The court of appeals thus would permit an award of benefits where the claimant becomes unemployed not because of her impairment but rather because of, for example, technological changes in the industry in which she has worked. That treatment of Section 423(d)(2)(A), as a restriction on the Commissioner's authority to *deny* benefits, is foreclosed by *Bowen* v. *Yuckert*, 482 U.S. 137 (1987), which held that it limits her "authority to *grant* disability benefits, not to deny them," *id.* at 148 (emphasis added).

In any event, Section 423(d)(2)(A) independently supports the Commissioner's construction. Section 423(d)(2)(A) states that, "[f]or purposes of" Section 423(d)(1)(A), an "individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is *not only unable to do his previous work* but cannot, considering his age, education, and work experience, *engage in any other kind of substantial gainful*

work which exists in the national economy" in "significant numbers." 42 U.S.C. 423(d)(2)(A) (emphases added). As a structural matter, the dependent clause "which exists in the national economy" immediately follows the phrase "other kind of substantial gainful work" and therefore is most naturally read as modifying that phrase alone. See, *e.g.*, *FTC* v. *Mandel Bros.*, 359 U.S. 385, 389 & n.4 (1959) (applying rule of last antecedent to limiting clause).

2. The court of appeals reached the contrary result by relying on the phrase "any other" in Section 423(d)(2)(A), holding that it "makes clear that an individual's 'previous work' was also regarded as a type of 'substantial gainful work which exists in the national economy.'" Pet. App. 8a. "When a sentence sets out one or more specific items followed by 'any other' and a description," the court stated, "the specific items *must* fall within the description." *Ibid.* (emphasis added). That novel rule of syntax is contradicted by *Mandel Brothers*, which reversed a court of appeals decision that had employed indistinguishable reasoning based on the words "any other." The words "any other" in Section 423(d)(2)(A) merely signify that "previous work" is a "kind of substantial gainful work"; they do not mean that "previous work" must "exist in the national economy" in "significant numbers."

C. Congress enacted the original definition of "disability" in 1956 against the backdrop of the Commissioner's construction of an identical definition in the disability freeze program. In the more than four decades since, Congress has repeatedly revisited, revised, and amended the definition of disability. In doing so, Congress has not only left the Commissioner's construction unaltered, but has endorsed it.

The enactment of Section 423(d)(2)(A) in 1967 was intended to ratify, not overrule, the Commissioner's construction of the term "disability." The legislative history of that provision specifically recognized that "previous" work and

"other" work are treated differently under the program, and described the clause "which exists in the national economy" as applying to "other" work but not "previous work." See H.R. Rep. No. 544, 90th Cong., 1st Sess. 30 (1967); S. Rep. No. 744, 90th Cong., 1st Sess. 48-49 (1967). Since the 1967 amendments, Congress has comprehensively reviewed the disability programs and amended the Act's disability provisions in other respects, but has not questioned the construction at issue in this case.

D. The Commissioner's longstanding interpretation serves sound purposes in the adjudication of claims under the vast Social Security disability program. The ability to perform a former job is the most concrete, reliable and administrable measure of the individual's abilities—the capacity to work—whether or not that particular job exists in significant numbers. The court of appeals' interpretation, furthermore, leads to absurd results, because it allows individuals to leave available jobs they can do to collect benefits if their former jobs are unusual. Finally, the Commissioner's rule prevents benefits from being awarded to a claimant who has become unemployed for a reason other than disability, such as technological change in the industry where she worked. It is thus consistent with Congress's intent to establish a disability program, not an unemployment program.

ARGUMENT

THE COMMISSIONER MAY DENY DISABILITY BENEFITS TO A CLAIMANT WHO REMAINS PHYSICALLY AND MENTALLY CAPABLE OF DOING HER PREVIOUS WORK, WITHOUT INQUIRING INTO WHETHER THAT PREVIOUS WORK EXISTS IN SIGNIFICANT NUMBERS IN THE NATIONAL ECONOMY

For the more than four decades that the Social Security Act has included a disability program, the Commissioner of

Social Security has construed the term "disability" to require that the claimant's physical or mental impairment preclude her from doing her former work, without any further inquiry into whether that former work exists in significant numbers in the national economy. That construction ensures that claimants receive benefits only when a physical or mental impairment, rather than the job market or technological change, is responsible for the claimant's inability to work. It promotes sound and efficient administration of the disability program, in which more than two million claims are filed each year, by permitting the Commissioner to rely on the most concrete and accurate indicator of the level of work the claimant can do. And it is supported by the text, structure, history, and purposes of the disability program.

The basic definition of disability, enacted in 1956, provides that "disability" means the "inability to engage in any substantial gainful activity *by reason of* any medically determinable physical or mental impairment" of the requisite severity and duration. 42 U.S.C. 423(d)(1)(A) (emphasis added). Construing and implementing the causation requirement imposed by the phrase "by reason of," the Commissioner has always required that it be the *impairment* that disables the claimant both for "his usual work," and "for any other type of substantial gainful activity." For example, anticipating the text Congress later enacted as Section 423(d)(2)(A), the Commissioner's 1960 regulations interpreting Section 423(d)(1)(A) provided that a claimant must not only be "incapable of performing his prior, usual or regular work," but also lack "the capacity to engage in any other kind of substantial gainful work, taking into account his age, education, experience and skills." 25 Fed. Reg. 8100 (1960) (codified at 20 C.F.R. 404.1502(b) (1961)). The regulations continued: "The physical or mental impairment must be the *primary reason* for the individual's inability to engage in substantial gainful activity. Where, for instance, an individual remains unemployed for a reason or reasons not due to his physical or mental impairment but *because of* * * * *technological changes in the industry in which he has worked* * * * such individual may not be considered under a disability." *Ibid.* (emphases added); p. 4, *supra*; see also 20 C.F.R. 404.1502(b) (1965).

Thus, in *May* v. *Gardner*, 362 F.2d 616, 618 (6th Cir. 1966), the court of appeals affirmed the denial of benefits to a claimant who had "failed to establish" that he was "disabled from following his usual occupation as dispatcher in the mines," even though such work was no longer available. The court explained: "We have * * * consistently held that, once the [Commissioner] finds * * * that the claimant is able to engage in a former trade or occupation, such a determination 'precludes the necessity of an administrative showing of gainful work which the [claimant] was capable of doing and the availability of any such work.'" *Ibid.* See *Massey* v. *Celebrezze*, 345 F.2d 146, 149 (6th Cir. 1965) (noting Congress's awareness of the Commissioner's rules, and ordering an award of benefits only after "emphasiz[ing] that" the claimant "was not unemployed because of * * * technological changes in the industry in which he had been employed").[6]

When Congress enacted Section 423(d)(2)(A) in 1967, it codified the separate treatment of former work and other work under the Commissioner's existing regulations. By its terms, and as confirmed by the accompanying House and

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[6] See also *Reyes Robles* v. *Finch*, 409 F.2d 84, 86 & n.1 (1st Cir. 1969) (relying on pre-1967 decisions to hold that, where the Commissioner "found that Plaintiff could still work at the previous jobs he had had," it was error for the district court to require an examination "as to * * * the availability of this type of work in the community": "Only when a claimant shows that he is not able to return to his former work is there a necessity for an administrative showing of available work.").

Senate Reports, Section 423(d)(2)(A) does not require that "previous work" exist in significant numbers in the national economy; it imposes that requirement only for "other" work. Indeed, until the court of appeals' decision in this case, *every* court of appeals that had resolved this issue under Section 423(d)(2)(A) agreed that a claimant's ability to do her former work precludes a finding of disability, whether or not that former work exists in significant numbers in the national economy. *Quang Van Han* v. *Bowen*, 882 F.2d 1453, 1457 (9th Cir. 1989); *Pass* v. *Chater*, 65 F.3d 1200, 1203-1204 (4th Cir. 1995); *Garcia* v. *Secretary of HHS*, 46 F.3d 552, 558 (6th Cir. 1995); *Rater* v. *Chater*, 73 F.3d 796, 799 (8th Cir. 1996).

In this case, however, the court of appeals invalidated the Commissioner's longstanding construction as foreclosed by Section 423(d)(2)(A). Relying almost exclusively on a dubious grammatical construction of that provision, the court of appeals held that the Commissioner may not deny a disability claim based on the claimant's physical and mental capacity to do her former work unless that work exists in significant numbers in the national economy. Pet. App. 7a-8a, 12a. Under the court of appeals' construction, a claimant may be entitled to benefits even though her impairment does not prevent her from meeting the demands of her prior job, if that job no longer exists in significant numbers as a result of (for example) technological changes in the industry. And that apparently would be true even if the claimant *quit* her position in order to apply for benefits.

In so holding, the court of appeals rejected the most natural reading of Section 423(d)(2)(A)'s text, disregarded the Commissioner's longstanding construction, ignored an important decision of this Court construing that provision, and overlooked decades of congressional enactments, review, and amendments, which demonstrate that "Congress intended the Agency's interpretation, or at least understood the interpretation as statutorily permissible." *Barnhart* v. *Walton*, 122 S. Ct. 1265, 1271 (2002). The judgment of the court of appeals therefore must be reversed.

A. The Commissioner's Construction Of The Act Is Entitled To Great Deference

Where an Act of Congress speaks clearly "to the precise question at issue," courts "must give effect to the unambiguously expressed intent of Congress." *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842, 843 (1984). If "the statute is silent or ambiguous with respect to the specific issue," however, courts must sustain an agency's interpretation if it is "based on a permissible construction of the statute." *Id.* at 843. Hence, this Court must decide "(1) whether the statute unambiguously forbids the Agency's interpretation, and, if not, (2) whether the interpretation for other reasons, exceeds the bounds of the permissible." *Walton*, 122 S. Ct. at 1269.

Deference is particularly appropriate where, as here, Congress has granted the Commissioner power to issue legislative rules, see 42 U.S.C. 405(a) (rulemaking authority); 42 U.S.C. 1383(d)(1) (incorporating Section 405(a) into Title XVI); *Sullivan* v. *Zebley*, 493 U.S. 521, 528 (1990); *Bowen* v. *Yuckert*, 482 U.S. 137, 145 (1987); *Heckler* v. *Campbell*, 461 U.S. 458, 466 (1983). In such circumstances, the Commissioner's construction must control unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Zebley*, 493 U.S. at 528 (quoting *Chevron*, 467 U.S. at 843-844). Indeed, as this Court has recognized, the "Social Security Act is among the most intricate ever drafted by Congress. * * * Perhaps appreciating the complexity of what it had wrought, Congress conferred on the [Commissioner] exceptionally broad authority to prescribe standards for applying certain sections of the Act." *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 43 (1981).

In addition, considerable weight is due "a contemporaneous construction of a statute by [those] charged with

the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Prods. Co.* v. *United States*, 288 U.S. 294, 315 (1933); see, *e.g.*, *Good Samaritan Hosp.* v. *Shalala*, 508 U.S. 402, 414 (1993); *Davis* v. *United States*, 495 U.S. 472, 484 (1990); *Edwards' Lessee* v. *Darby*, 25 U.S. (12 Wheat.) 206, 210 (1827). Here, the Commissioner's construction dates from the disability program's earliest days. Such a "contemporaneous construction deserves special deference when it has remained consistent over a long period of time." *EEOC* v. *Associated Dry Goods Corp.*, 449 U.S. 590, 600 n.17 (1981); see *Davis*, 495 U.S. at 484. Under these principles, the Commissioner's interpretation of the Act must be sustained.

B. The Commissioner's Construction Is Supported By The Text Of 42 U.S.C. 423(d)

Section 423(d)(1)(A) defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. 423(d)(1)(A). Because the phrase "by reason of" imposes a causation requirement, the Commissioner's regulations implementing Section 423(d)(1)(A) have always required that it be the impairment—rather than changes in marketplace, economic, or technological conditions—that precludes the claimant from performing her former or customary work as well as any other type of work. See pp. 4-7, 18-19, *supra*, and 34-37, *infra*. And, consistent with that principle, those regulations have never required a determination whether the claimant's past work exists in significant numbers in the national economy. See pp. 4-7, *supra*.

In this case, the court of appeals did not question—indeed, it did not mention—the Commissioner's longstanding

construction of the "by reason of" requirement in Section 423(d)(*1*)(A). Instead, the court of appeals relied almost exclusively on Section 423(d)(*2*)(A). See Pet. App. 7a-9a. Section 423(d)(2)(A) was enacted in 1967 in response to judicial decisions that had expanded the disability program by placing inappropriate weight on the applicant's ability to *obtain* employment rather than her *capacity* to work. See S. Rep. No. 744, 90th Cong., 1st Sess. 48 (1967); H.R. Rep. No. 544, 90th Cong., 1st Sess. 30 (1967). Section 423(d)(2)(A) accordingly limits the extent to which benefits can be granted under Section 423(d)(1)(A). It states:

> For purposes of paragraph [d](1)(A)— * * * An individual shall be determined to be under a disability *only if* his physical or mental impairment or impairments are of *such severity that* he is *not only unable to do his previous work* but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.

42 U.S.C. 423(d)(2)(A) (emphases added). By enacting Section 423(d)(2)(A), Congress sought to "reemphasize the predominant importance of medical factors" rather than job-market factors "in the disability determination." H.R. Rep. No. 544, *supra*, at 30.

Believing Section 423(d)(2)(A) to be "unambiguous," the court of appeals concluded that Section 423(d)(2)(A) bars the Commissioner from denying a disability claim based on the claimant's capacity to do former work unless that work "exists in the national economy," *i.e.*, unless that work "exists in significant numbers either in the region where such individual lives or in several regions of the country." Pet. App. 8a (quoting 42 U.S.C. 423(d)(2)(A)). Accordingly, the court held that the Commissioner may not deny respondent benefits based on her capacity to do her former job (elevator operator) if, because of technological changes, the

job no longer exists in significant numbers. That holding is inconsistent with the text and structure of Section 423(d)(2)(A), and with the Commissioner's longstanding construction of both that provision and the basic definition of disability in Section 423(d)(1)(A).

1. *The Text and Structure Of Section 423(d)(2)(A) Support The Commissioner's Distinct Treatment Of "Previous" Work And "Other" Work*

a. As an initial matter, the court of appeals misunderstood the operative effect of Section 423(d)(2)(A) and its role in the statutory scheme. By its terms, Section 423(d)(2)(A) provides that a claimant shall be found disabled "only if" specified conditions are met. Because it uses the phrase "only if," Section 423(d)(2)(A) "states a *necessary*, but not a *sufficient*, condition" for disability. See *California* v. *Hodari D.*, 499 U.S. 621, 628 (1991) (so construing the phrase "only if"). The court of appeals, by contrast, erroneously treated Section 423(d)(2)(A) as requiring the Commissioner to grant benefits *whenever* its specified conditions are met. See Pet. App. 7a (stating that the Social Security Act "defines disability as follows," and then quoting Section 423(d)(2)(A)).

The court of appeals' view of Section 423(d)(2)(A) is foreclosed by this Court's decision in *Yuckert*. In that case, the Court specifically rejected the contention that Section 423(d)(2)(A) restricts the Commissioner's authority to deny benefits. "The words of this provision," the Court stated, "limit the [Commissioner's] authority to *grant* disability benefits, not to deny them." *Yuckert*, 482 U.S. at 148 (emphasis added). Section 423(d)(2)(A) thus "*restricts* eligibility for disability benefits to claimants whose medically severe impairments prevent them from doing their previous work *and* also prevent them from doing any other substantial gainful work in the national economy." *Ibid.* (initial emphasis added). That interpretation of Section 423(d)(2)(A) reflects its underlying purpose: to return the focus of the

disability program to the claimant's functional capacity to perform work, as the Commissioner's regulations implementing Section 423(d)(1)(A) had long required, rather than job-market considerations. The court of appeals at no point attempted to reconcile its construction of Section 423(d)(2)(A) with that purpose or with *Yuckert*.

b. The court of appeals, moreover, misinterpreted Section 423(d)(2)(A) on its own terms. Far from undermining the Commissioner's regulations, Section 423(d)(2)(A) supports them. Indeed, under the Commissioner's longstanding construction of Section 423(d)(2)(A), that provision *itself* precludes benefits awards where the claimant is physically and mentally capable of doing her former work, without inquiry into whether that work exists in significant numbers in the national economy.

By its terms, Section 423(d)(2)(A) requires that the claimant's impairment be "of *such severity that* he is * * * unable to do his previous work." 42 U.S.C. 423(d)(2)(A) (emphasis added). Section 423(d)(2)(A) thus imposes a causation requirement of its own, mandating that the severity of the impairment be the cause of the claimant's inability to do her previous work. In that respect, it reinforces the Commissioner's longstanding construction of the "by reason of" requirement in Section 423(d)(1)(A). See pp. 17-21, *supra*. Indeed, as explained below, Section 423(d)(2)(A) was designed to codify the Commissioner's preexisting policies and rules implementing Section 423(d)(1)(A). See pp. 37-39, *infra*.

The structure of Section 423(d)(2)(A), moreover, belies the suggestion that a claimant's "previous" work (like "any other * * * work") must exist in the national economy in significant numbers. Section 423(d)(2)(A) separates "previous work" from "any other kind of substantial gainful work," and attaches two limiting conditions to the latter that it does not attach to the former. First, while inability to engage in "any

other kind of substantial gainful work" is determined "considering [the claimant's] age, education, and work experience," ability to do "previous work" is not. Second, while Section 423(d)(2)(A) modifies the phrase "any other kind of substantial gainful work" by adding the dependent clause "which exists in the national economy" in "significant numbers," it does not attach that limitation to the phrase "previous work."

As one court of appeals observed:

> The Act sets out two requirements for disability: A claimant must (1) be "unable to do his previous work," and (2) be unable to "engage in any other kind of work which exists in the national economy." * * * Although the Act requires 'other' work to exist in the United States, it places no such limitation on 'previous' work; it is therefore reasonable to infer that the ability to perform previous work renders a claimant ineligible for benefits whether or not that work exists in the United States.

Quang Van Han, 882 F.2d at 1457; see *ibid.* ("[T]he limitations governing other work do not modify previous work; indeed, * * * their absence gives rise to the inference that previous work is not subject to the same restrictions."). That interpretation conforms to the "rule of the last antecedent," under which the limiting clause "which exists in the national economy" should be read as modifying only the phrase it immediately follows, *i.e.*, "any other kind of substantial gainful work." See, *e.g.*, *FTC* v. *Mandel Bros.*, 359 U.S. 385, 389 & n.4 (1959) (limiting clause is generally to be applied only to the last antecedent, unless the subject matter requires a different construction); see also *Nobelman* v. *American Sav. Bank*, 508 U.S. 324, 330 (1993) (application of the "rule of the last antecedent" is "quite sensible as a matter of grammar").

c. The Commissioner has always construed Section 423(d)(2)(A) in that manner. After Section 423(d)(2)(A) was enacted in 1967, the Commissioner's revised regulations carried forward the rules that "the physical or mental impairment must be the primary reason for the inability to engage in any substantial gainful activity"; and that if "an individual remains unemployed for a reason or reasons not due to his physical or mental impairment but because of * * * technological changes in the industry in which he has worked, * * * the individual may not be considered under a disability." 33 Fed. Reg. 11,749, 11,751 (1968) (codified as 20 C.F.R. 404.1502(b) (1969)). As before, the regulations imposed no requirement that a claimant's past work be found to exist in significant numbers in the national economy.

The same is true of step four of the current sequential evaluation process, which now governs the previous work inquiry. At step four, if the claimant is found to retain the "residual functional capacity" to meet the "physical and mental demands of the work [she] ha[s] done in the past," she will be found "not disabled." 20 C.F.R. 404.1520(e), 416.920(e); see 20 C.F.R. 404.1560(b), 416.960(b); pp. 7-8, *supra*. The Commissioner will not proceed to the final (fifth) step—and examine the availability of work in the national economy—unless the claimant "cannot do any work [she] ha[s] done in the past *because* [she] ha[s] a severe impairment[]." 20 C.F.R. 404.1520(f), 416.920(f) (emphasis added). See also *SSA Program Operations Manual System* (*POMS*) DI 25005.001 (1996) ("Whether the [past relevant work] still exists in the national economy is also immaterial.").

The Commissioner's construction is also embodied in a formal Social Security Ruling. Interpreting her regulations in the context of a claimant's past work in a foreign country, the Commissioner explained that it does not matter whether such "previous work" exists in the United States economy. Instead, at step four of the sequential process, the central

issue is the claimant's physical and mental capacity to do her past work:

> If a claimant can meet the sitting, standing, walking, lifting, manipulative, intellectual, emotional and other physical and mental requirements of a past job, he or she is still functionally capable of performing that job regardless of the fact that the individual no longer resides in the country where the past work was performed.

SSR 82-40 (*available in* 1982 WL 31388, at *2). Relying on the text and legislative history of Section 423(d)(2)(A), the Commissioner explained:

> [Section 423(d)(2)(A)] does not qualify "previous work" but does specify that "other . . . work" must exist in significant numbers in the national economy. The legislative history of the statutory provisions also does not qualify "previous work," but clearly indicates that the provisions were enacted to provide guidelines "to re-emphasize the predominant importance of medical factors in the disability determination."

Ibid. The Commissioner therefore concluded that, for both "past work in a foreign economy" and "past work in the U.S. economy," the only question is the claimant's ability to meet "the physical and mental demands of the particular past job." *Ibid.* "It is only after a claimant proves that he or she is not able to do his or her previous work that the burden shifts to the" Commissioner "to show that there is [other] work available in the U.S. national economy which the claimant can do (the fifth and last step of the sequential evaluation process)." *Ibid.*[7]

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[7] The Ruling thus states that it is improper to "elevate[] an element of the fifth step of the sequential evaluation process, availability of work in the national economy, to the fourth step which only deals with the claimant's ability to do his or her past work." SSR 82-40 (1982 WL 31388, at *2).

2. *This Court's Decisions And Common Usage Contradict The Court of Appeals' Conclusion That The Words "Any Other" In Section 423(d)(2)(A) Foreclose the Commissioner's Construction*

Disagreeing with the Commissioner's longstanding construction (and the decisions of all the other courts of appeals), the court of appeals in this case placed dispositive weight on the words "any other" in the phrase "not only unable to do his previous work but cannot * * * engage in *any other* kind of substantial gainful work which exists in the national economy." Pet. App. 8a (emphasis added). The court did not deny that, because the dependent clause "which exists in the national economy" immediately follows the phrase "any other kind of substantial gainful work," it modifies that phrase. But it concluded that, by virtue of the words "any other," the clause must *also* modify the phrase "previous work." The court reasoned that the "phrase 'any other' in this provision * * * makes clear that an individual's 'previous work' was regarded as a type of 'substantial gainful work which exists in the national economy.'" *Ibid.* According to the court of appeals, "[w]hen a sentence sets out one or more specific items followed by 'any other' and a description, the specific items *must* fall within the description." *Ibid.* (emphasis added). That novel and inflexible rule of statutory construction cannot be squared with this Court's decision in *Mandel Brothers* or with ordinary usage.

a. In *Mandel Brothers*, this Court addressed the effect of the words "any other" in the Fur Products Trading Act, which defined "invoice" as "a written account, memorandum, list, or catalog" issued in connection with a commercial transaction in which fur products are "transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, *or any other person who is engaged in dealing commercially in fur products or furs*." 359 U.S. at

386 (emphasis added). Like the court of appeals here, the court of appeals in that case relied on the phrase "any other" to dispense with the rule of the last antecedent and to hold that the limiting clause at the end of the sentence ("who is engaged in dealing commercially") must apply to all categories listed before the phrase "or any other" ("purchaser, consignee," etc.). That court stated:

> If the last antecedent were "any person" instead of "any other person," the word "purchaser" might not be limited to one engaged in dealing commercially in fur products or furs. However, when the statute says purchaser *or any other person who is so engaged* the limitation clearly applies to *purchaser*. No other meaning is possible.

254 F.2d 18, 22 (7th Cir. 1958) (initial emphasis added).

This Court unanimously reversed. The court of appeals, the Court explained, had relied on "the last phrase * * * —'or any other person who is engaged in dealing commercially in fur products or furs.' [The court of appeals] held that 'engaged in dealing commercially' modifies not only 'any other person' but also all the other preceding terms in the subsection including 'purchaser.'" 359 U.S. at 389. While that was "a possible construction," the Court explained, it was not the *only* possible construction. *Ibid.* And the Court ultimately rejected the court of appeals' construction, concluding that the "limiting clause is to be applied only to the last antecedent." *Ibid.*

The same conclusion follows here. Far from eliminating an ambiguity, the words "any other" in Section 423(d)(2)(A) at best create one. Cf. *Nobelman*, 508 U.S. at 331-332. Given the general rule that "qualifying words, phrases, and clauses are to be applied to the words or phrase immediately preceding" and not to "others more remote," *Resolution Trust Corp.* v. *Nernberg*, 3 F.3d 62, 65 (3d Cir. 1993), it is neither necessary nor natural to infer from the words "any other" that "previous" work, like "any other kind of

substantial gainful work," must "exist[] in the national economy" in "significant numbers." See 2A N. Singer, *Sutherland on Statutory Construction* § 47.33, at 369 (6th ed. 2000) ("qualifying words and phrases * * * refer solely to the last antecedent" unless the "contrary intention appears"). In *Mandel Brothers*, the words "any other" did not indicate that the specific categories ("purchasers, consignees," etc.) preceding the clause "or any other person who is engaged in dealing commercially" must be "persons * * * *engaged in dealing commercially*"; it merely signaled that those specific categories were "persons." Likewise, in Section 423(d)(2)(A), the words "any other" in the clause "not only unable to do his previous work but cannot * * * engage in *any other* kind of *substantial gainful work* which exists in the national economy" do not mean that a claimant's prior job can be "previous work" only if it is a "kind of substantial gainful work *which exists in the national economy*." Instead, they merely indicate that a claimant's "previous work" is a "kind of substantial gainful work."

Indeed, although more than three decades have passed since Section 423(d)(2)(A) was enacted, no other court of appeals decision had ever adopted the grammatical construction that the Third Circuit believed was unambiguously required. To the contrary, relying on the rule of the last antecedent, the courts of appeals had unanimously rejected it. See *Quang Van Han*, 882 F.2d at 1457 (rejecting the claim that "the word 'other' * * * indicates that 'previous work' is a subset of 'substantial gainful work which exists in the national economy'"); *Garcia*, 46 F.3d at 558 (similar); *Rater*, 73 F.3d at 798 (rejecting claim that, under Section 423(d)(2)(A), "the term 'previous work' is modified by the qualifying phrase 'which exists in the national economy'"); *Pass*, 65 F.3d at 1203 (similar).[8] See also *Yuckert*, 482 U.S.

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[8] The court of appeals in this case relied on dictum in *Kolman* v. *Sullivan*, 925 F.2d 212 (7th Cir. 1991), to support its contrary view. See

at 148 (describing Section 423(d)(2)(A) as "restrict[ing] eligibility for disability benefits to claimants whose medically severe impairments prevent them from doing their previous work *and* also prevent them from doing any other substantial gainful work in the national economy.").

b. The court of appeals attempted to support its novel rule of statutory construction using several grammatical analogies (Pet. App. 8a), but those analogies are inapt. According to the court of appeals, the clause "which exists in the national economy" must apply to "previous work" because:

> [I]t makes sense to say: "I have not seen a tiger or any other large cat" or "I have not read *Oliver Twist* or any other novel which Charles Dickens wrote." But it would make no sense to say, "I have not seen a tiger or any other bird" or "I have not read *Oliver Twist* or any other novel which Leo Tolstoy wrote."

Ibid. Those examples, however, do not parallel the grammatical structure of Section 423(d)(2)(A), and they do not justify a departure from *Mandel Brothers* and the rule of the last antecedent.

It makes perfect grammatical sense—and more closely parallels the structure of Section 423(d)(2)(A)—to say "not

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Pet. App. 14a. In *Kolman*, the court held that the mentally-impaired claimant's previous job, because it was a temporary "makework training job," should not qualify as past relevant work at step four and that, unless another relevant previous job could be identified, the evaluation had to proceed to step five. 925 F.2d at 213-214. The court commented that if the temporary training job had been a permanent position that had disappeared, "the fact that [the claimant] could perform it if it did exist does not appeal to us as being either a rational ground for denying benefits or one intended by the regulations." *Id.* at 213. That *dictum* was not a construction of Section 423(d)(2)(A)'s text, but rather a misinterpretation of what the Commissioner "intended by [her] regulations." The Seventh Circuit, moreover, has declined to expand that dictum. See *Knight* v. *Chater*, 55 F.3d 309, 315-316 (1995).

only have I not seen a tiger, but I have not seen any other large animal which can climb higher than a tiger"; or "not only have I not read *Oliver Twist*, but I have not read any other Victorian novels which were published after *Oliver Twist*." In the first example, the words "any other" clarify that "tiger" is a category of "large animal," but they obviously do not imply that a tiger can climb higher than a tiger. Likewise, in the second example, the phrase "any other" suggests that *Oliver Twist* is a Victorian novel, but cannot be read to suggest that *Oliver Twist* is a subset of "Victorian novels which were published after *Oliver Twist*." More to the point, and to use an example that even more closely parallels Section 423(d)(2)(A)'s structure, a disappointed traveler might complain that the weather was "so severe that we were not only unable to visit the officially recommended sites, but we were prevented from visiting any other tourist attractions which our children wanted to see." That sentence does not imply that the officially recommended sites were ones the children wanted to see; it implies only that the officially recommended sites were "tourist attractions."

The same grammatical analysis applies here. The words "any other" in Section 423(d)(2)(A) are best understood as indicating that "previous work" is merely a "kind of substantial gainful work," not that a claimant's previous work must "exist in the national economy" in "significant numbers." As explained below, that construction, and only that construction, is consistent with the legislative history and evolution of the Act, and with the Commissioner's construction at the time Section 423(d)(2)(A) was enacted. To the extent there is ambiguity, the Commissioner's reasonable construction must control.

C. The Commissioner's Construction Is Compelled By The Act's Evolution And History

In the more than four decades during which Social Security disability programs have existed, Congress has repeatedly revisited and revised those programs with full awareness of the Commissioner's interpretation. Congress has not overturned the Commissioner's construction, but rather has endorsed it. Those "circumstances provide further evidence—if more is needed—that Congress intended the Agency's interpretation, or at least understood the interpretation as statutorily permissible." *Walton*, 122 S. Ct. at 1271.

1. *Congress Adopted The Definition Of Disability In Section 423(d)(1)(A) Against The Backdrop Of The Commissioner's Construction And Repeatedly Endorsed It Thereafter*

The definition of "disability" enacted in 1956, now found in Section 423(d)(1)(A), was copied from an earlier but otherwise identical definition used in the 1954 disability freeze program. See pp. 3-4, *supra*. In enacting that earlier program, Congress expressed its expectation that the Commissioner would promulgate standards that "will reflect the requirement that the individual *be disabled not only for his usual work* but also for any type of substantial gainful activity." S. Rep. No. 1987, 83d Cong., 2d Sess. 21 (1954) (emphasis added); H.R. Rep. No. 1698, 83d Cong., 2d Sess. 23 (1954) (same). When implementing that program through the *Disability Freeze State Manual* in 1955, the Commissioner explained that a claimant is disabled only if the impairment is "the cause of inability to work"; that the inability to work "must result from the impairment and its effect on the applicant's employability" rather than "other causes"; and that benefits would not be awarded to an "individual who is unemployed by reason of economic conditions" or "unavailability of jobs." *Disability Freeze State Manual* §§ 314.A, 314.B (May 16, 1955). That earlier construction of the same definition of "disability" bears strongly on the proper construction here. Where "Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." *Lorillard* v. *Pons*, 434 U.S. 575, 581 (1978).

Congress, moreover, has been fully aware of the Commissioner's construction since 1956 and has repeatedly endorsed it in the years that followed. For example, four years after Congress enacted the disability insurance program, the Subcommittee on the Administration of the Social Security Laws of the House Committee on Ways and Means conducted a comprehensive examination of the program. The resulting report acknowledged that, under the Commissioner's construction (which was embodied in manuals and other written guidance), an individual is not entitled to benefits if the person has "*become unemployed or remain[s] unemployed* for a * * * reason or reasons other than disability," such as "*technological changes* in the industry in which the applicant has been employed * * * . The disability provisions are intended to benefit only those persons who are not working because of incapacity, and not those unemployed because of these other factors." Staff of the Subcomm. on the Administration of the Social Security Laws of the House Comm. on Ways and Means, 86th Cong., 2d Sess., *Preliminary Report on Administration of Social Security Disability Insurance Program* 19 (Comm. Print 1960) (*1960 Comm. Report*) (emphases added). Although "[t]he subcommittee recognize[d] that this distinction is difficult for the public to understand," *ibid.*, it nonetheless reaffirmed Congress's desire to make "a clear distinction between this program and one concerned with unemployment," *id.* at 20.

Just five years later, in 1965, Congress amended the original definition of "disability" in Section 423(d)(1)(A) to change the required duration from "long-continued and indefinite" to "a continuous period of not less than 12 months." See Social Security Amendments of 1965, Pub. L. No. 89-97, § 303(a)(1), 79 Stat. 366. By then, the Commissioner had published regulations construing the term "disability." Those regulations required the claimant to be physically or mentally "incapable of performing his prior, usual or regular work"; mandated that the physical or mental impairment "be the primary reason for the individual's inability" to work; and precluded a finding of disability if the claimant became or remained "unemployed for a reason or reasons not due to his physical or mental impairment but because of technological changes in the industry in which he has worked." 25 Fed. Reg. 8100 (1960) (codified at 20 C.F.R. 404.1502(b) (1961)); see 20 C.F.R. 404.1502(b) (1965). Even as Congress changed the duration requirement in Section 423(d)(1)(A), it did nothing to alter the Commissioner's construction of the substantive definition of "disability" in that provision.

"It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.'" *Commodity Futures Trading Comm'n* v. *Schor*, 478 U.S. 833, 846 (1986); *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 274-275 (1974). That conclusion is especially warranted here, because the House Report on the 1965 amendments acknowledged and endorsed the Commissioner's rules, including the requirement that the impairment (rather than some other cause) prevent the individual from performing her prior work. The House Report explained:

> [T]o be eligible an individual must demonstrate that he is not only unable, *by reason of a physical or mental impairment, to perform the type of work he previously did*, but that he is also unable, taking into account his age, education, and experience, to perform any other type of substantial gainful work, regardless of whether or not such work is available to him in the locality in which he lives.

H.R. Rep. No. 213, 89th Cong., 1st Sess. 88 (1965) (emphasis added). The court of appeals' conclusion that an individual may be disabled even where the alleged inability "to perform the type of work [she] previously did" is *not* "by reason of a physical or mental impairment"—but is instead based on technological changes so that the previous work no longer exists in significant numbers—is contrary to Congress's evident understanding of the manner in which Section 423(d)(1)(A) had been interpreted and implemented.

2. *The Court Of Appeals' Construction Of Section 423(d)(2)(A) Is Inconsistent With Congress's Intent In Enacting That Provision*

The court of appeals' decision is even more difficult to reconcile with the origins of Section 423(d)(2)(A). When Congress enacted that provision in 1967, it was once again acting against the background of the Commissioner's well-settled construction of the definition of "disability" in Section 423(d)(1)(A)—a construction that by then had been upheld by several courts of appeals. See pp. 18-19 & note 6, *supra*.

Congress was fully aware of the Commissioner's distinct treatment of previous work and other work. The House and Senate Reports, for example, explained that the Commissioner has the burden of showing "other" work that a claimant can do, but observed that such a duty arises only "once the claimant has shown inability to perform his usual vocation." See S. Rep. No. 744, 90th Cong., 1st Sess. 47 (1967). And far from rejecting that construction, Congress

codified it in Section 423(d)(2)(A). As one Member of Congress explained, Section 423(d)(2)(A) was added to "reflect[] the regulations and policies now followed in the administration of the disability provisions of the law." 113 Cong. Rec. 23,065 (1967) (statement of Rep. King). "[W]hat we are attempting to do to the present definition of disability * * * is really no basic change at all—it clarifies, amplifies, and makes more explicit in the statute the policy guidelines and the requirements that must be met to establish the existence of disability." *Ibid.*

The court of appeals' suggestion that the clause "which exists in the national economy" modifies "previous work" in Section 423(d)(2)(A) is also contradicted by the House and Senate Reports' descriptions of that provision. Those Reports both treat the clause "which exists in the national economy" as applicable to "other work," but *not* "former work":

> The language added by the bill would provide * * * that *if, despite his impairment or impairments, an individual still can do his previous work, he is not under a disability*; and that if, considering the severity of his impairment together with his age, education, and experience, he has the ability to engage *in some other type of substantial gainful work that exists in the national economy even th[]ough he can no longer do his previous work*, he also is not under a disability regardless of whether or not such work exists in the general area in which he lives or whether he would be hired to do such work.

H.R. Rep. No. 544, *supra*, at 30 (emphasis added); S. Rep. No. 744, *supra*, at 48-49 (similar).

The court of appeals' view that Section 423(d)(2)(A) imposes a requirement that "previous work" exist in significant numbers in the national economy is also difficult to square with that provision's purpose. Section 423(d)(2)(A)

was added in part to respond to a series of judicial decisions that, by focusing on the job market rather than the functional effect of the claimant's medical impairment, had expanded the scope of the disability program. See S. Rep. No. 744, *supra*, at 48; H.R. Rep. No. 544, *supra*, at 30. "As a remedy for the situation," Section 423(d)(2)(A) was designed to "provide guidelines to reemphasize the predominant importance of medical factors," as opposed to labor-market considerations, "in the disability determination." *Ibid.* It is exceedingly unlikely that Congress meant to contradict that goal—and expand both the benefits program and the consideration of market factors within the program—by overruling the Commissioner's longstanding rule that a claimant is not disabled if, despite her impairment, she retains the physical and mental capacity to perform her previous work.

3. *Three Additional Decades Of Experience In The Disability Programs Confirm The Commissioner's Construction*

Following the 1967 amendments, the Commissioner revised the agency's regulations to account for the addition of Section 423(d)(2)(A). Consistent with that provision's text and history, the Commissioner carried forward the requirement that "[t]he physical or mental impairment must be the primary reason for the individual's inability to engage in any substantial gainful activity," as well as the rule that, if "an individual remains unemployed for a reason or reasons not due to his physical or mental impairment but because of * * * *technological changes in the industry in which he has worked* * * * the individual may not be considered under a disability." 33 Fed. Reg. 11,749, 11,751 (1968) (emphasis added) (codified at 20 C.F.R. 404.1502(b) (1969)).

When the Commissioner comprehensively revised those regulations to formalize a five-step sequential evaluation process in 1978—issuing new regulations "reflective of

longstanding policies," 43 Fed. Reg. at 55,355—the Commissioner retained that requirement as step four.[9] The Commissioner also retained that construction when rewriting the regulations in "simpler, briefer language" pursuant to executive order in 1980. 45 Fed. Reg. 55,566 (1980) (codified at 20 C.F.R. 404.1520(e) and (f)(1) (1981)). And the Commissioner reiterated that construction again in a formal Social Security Ruling in 1982. See pp. 27-28, *supra* (SSR 82-40).

Following the issuance of those regulations and SSR 82-40, Congress conducted a comprehensive review of the five-step sequential evaluation process in 1984. See, *e.g.*, H.R. Rep. No. 618, 98th Cong., 2d Sess. 6-8 (1984). Although Congress amended the Act to adjust the use of the sequential evaluation process in certain other respects (see Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98-460, 98 Stat. 1794), at no point did Congress suggest an intent to alter the Commissioner's settled construction of "disability" in Section 423(d)(1)(A) and the "previous work" limitation in Section 423(d)(2)(A). To the contrary, the House Report emphasized that the legislation was *not* "intend[ed] to alter the current definition" of disability. H.R. Rep. No. 618, *supra*, at 6. It explained that "the purpose of the disability insurance program is to provide benefits only for those who are unable to work." *Id.* at 7. And it stated that "benefits should be granted to those who are unable to work *because of* a medically determinable impairment." *Id.*

[9] The 1978 regulations provided that "disability shall be found not to exist" at step four if "the *impairment(s)* does not prevent the individual from *meeting the physical and mental demands of past relevant work*." 20 C.F.R. 404.1503(e) (1979) (emphasis added). Only if the claimant "cannot perform any past relevant work *because of a severe impairment(s)*" would the Commissioner ask if the claimant's "remaining physical and mental capacities are consistent with his or her meeting the physical and mental demands of a significant number of jobs * * * in the national economy" in light of "vocational capabilities (considering age, education, and experience)." 20 C.F.R. 404.1503(f) (emphasis added).

at 8 (emphasis added). Moreover, the Conference Report expressly stated that Congress did "not intend to eliminate or impair the use of [the sequential evaluation] process." *Ibid.* (quoted in *Yuckert*, 482 U.S. at 152). Here, as in *Walton*, 122 S. Ct. at 1270-1271, Congress's repeated review and revision of the statute without "revis[ing] or repeal[ing] the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress." See also *Schor*, 478 U.S. at 846; *Bell Aerospace Co.*, 416 U.S. at 274-275.

D. The Commissioner's Longstanding Construction Serves Sound Purposes In The Administration Of The Disability Programs

1. Just as the Commissioner has long construed the definition of disability to require that a physical or mental impairment rather than some other factor (such as technological change) render the claimant incapable of performing her prior work, the courts of appeals have long upheld that construction. Section 423(d)(2)(A)'s requirement that work exist "in the national economy" in "significant numbers," those courts have held, applies to "other" work but not "previous" work the claimant has done. As one court of appeals concluded, the text "easily bears" the Commissioner's interpretation, which is supported by Congress's "inten[t] to distinguish sharply between unemployment compensation and the disability benefits provided by the Act," and by Congress's desire to make disability "a predominantly medical determination, as opposed to a vocational one." *Garcia*, 46 F.3d at 558-559; see *Pass*, 65 F.3d at 1203-1204, 1207 (similar); *Rater*, 73 F.3d at 799 (similar); *Quang Van Han*, 882 F.2d at 1457 (similar); see also *May*, 362 F.2d at 618; *Reyes Robles*, 409 F.2d at 86 & n.1; p. 19 & note 6, *supra*.

Those courts have recognized that an inability to engage in substantial gainful activity is not "by reason of" the impairment if the claimant retains the physical and mental

capacity to perform her former job. They also have recognized that the ability to perform a former job is a reliable and administrable measure of the capacity to work, whether or not that particular job exists in significant numbers in the national economy. Indeed, ability to perform a prior job is the most concrete and individualized measure of the individual's capabilities. Consequently, "[i]f the claimant is in sufficient physical and mental condition to perform his previous work, his impairment is clearly not so severe as to preclude employment." *Quang Van Han*, 882 F.3d at 1457. As the Fourth Circuit explained, "[p]ast relevant work in the regulatory scheme is a gauge by which to measure the physical and mental capabilities of an individual and the activities that he or she is able to perform, rather than a means by which to assure that the claimant can actually find employment." *Pass*, 65 F.3d at 1204. "[T]he point * * * is not that [a claimant] can actually be employed in her past job, but that she is able to do a certain level of work." Pet. App. 23a (Rendell, J., dissenting).

The distinction between previous work and "any other kind" of work the claimant might do makes particular sense given the very different natures of the "previous" work and "other" work inquiries. A claimant's previous job is specific, concrete, and identifiable, and the ability to perform its demands is therefore a direct and individualized measure of actual capacity. The previous work inquiry is, moreover, bounded by the historical fact of what the claimant has done in the past. "Other" work, in contrast, is by definition work the claimant has *not* done, and analysis of that issue is more removed from concrete empirical proof.[10] As a result, it

[10] Indeed, for that reason, the "other" work inquiry must rely on generalizations (including the "grid" or "matrix" regulations described in *Heckler* v. *Campbell*, 461 U.S. at 461-462, 467-468, as well as presumptions based on age, etc., 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 200.00(d)) that render it a less individualized measure than prior work.

makes sense to focus the broad-ranging inquiry about "other" jobs on those jobs that exist in significant numbers in the national economy.

2. In reaching the contrary result, the court of appeals suggested that its construction is necessary to avoid absurd results. According to the court of appeals, "there is no plausible reason why Congress might have wanted to deny benefits" to a claimant who, "although unable to perform any job that actually exists in the national economy, could perform a previous job" that "no longer exists." Pet. App. 9a. It is highly questionable whether a perceived need to avoid an absurd result in a hypothetical example under a massive benefits program could justify overturning a longstanding administrative construction that Congress has repeatedly acknowledged, endorsed, and ratified. Cf. *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438, 459 (2002) (Court "rarely invokes" absurdity notion "to override unambiguous legislation"). But even if that rarely used tool of statutory construction is not altogether foreclosed here, the Commissioner's construction is hardly absurd, and the Commissioner's rule is in any event necessary to avoid the absurd consequences that the court of appeals' contrary construction would engender.

The court of appeals' absurdity argument fails in the first instance because it is inconsistent with the function of the previous-work inquiry. The ability to do former work is the most concrete and thus accurate measure of the claimant's physical and mental capacity for work. It therefore serves as a sound gauge of "the ability to perform work, not as proof that the claimant can be employed in that particular job." Pet. App. 19a (Rendell, J., dissenting). Accord *Quang Van Han*, 882 F.3d at 1457; *Pass*, 65 F.3d at 1204; p. 42, *supra*. Thus, contrary to the court of appeals' and respondent's supposition, the Commissioner's regulations are not premised on the prospect of "sending an applicant back in

time to resume a job no longer available in the economy." Br. in Opp. 11. Rather, the ability to do that job serves as an appropriate measure of the claimant's actual capacity for substantial gainful activity.

That purpose of the previous work inquiry parallels the purpose of the "other" work inquiry at the next step of the process. Even where "other" work is at issue, the Act declares that it makes no difference "whether such work exists in the immediate area in which [the claimant] lives, or whether a specific vacancy exists for him, or whether he would be hired." 42 U.S.C. 423(d)(2)(A), 1382c(a)(3)(B); see H.R. Rep. No. 544, *supra*, at 30 ("[S]uch factors as whether the work he could do exists in his local area, or whether there are job openings, or whether he would or would not actually be hired may be pertinent in relation to other forms of protection," but "may not be used as a basis for finding an individual to be disabled."). Even at that step, the question is the claimant's *capacity*, not ready access to jobs in the market.

It is also speculative to hypothesize about claimants who can do only *one* form of work (a particular past job) and no other, only to see that one form of work cease to exist in significant numbers in the national economy.[11] No principle of statutory construction requires Congress to anticipate—or imposes a presumption that Congress is deemed to anticipate—such a remote hypothetical case and to fashion the definitions of disability, governing millions of claims each year, to accommodate it. Congress simply did not accept the Third Circuit's assumption that a significant number of

[11] The Commissioner's rules, which restrict how far back the Commissioner will look in identifying previous work, render such speculation especially unwarranted. See SSR 82-62 (1982). The SSA generally uses a 15-year rule. The resulting presumption makes claims resolution easier by eliminating the need to examine every job the claimant has held during her potentially long work history.

individuals are capable of performing one and only one narrow type of work.[12]

Instead, in prescribing the principles on which the disability program would operate, Congress provided administrable standards that emphasize "the predominant importance of medical factors" over economic considerations. S. Rep. No. 744, *supra*, at 48. Reintroducing job-market considerations into the otherwise clear fourth step of the sequential evaluation process would interfere with that goal. As the dissenting opinion below explained: "If Congress and the regulatory body charged with implementing the statutory scheme have determined that [a claimant] should not be considered 'disabled' if she still has the ability, physically and mentally, to do what she had previously done," it is not for the courts to "graft additional requirements on the statutory and regulatory scheme." Pet. App. 23a.

The court of appeals' new rule would also introduce a significant and unnecessary new burden into this massive program. Because the Social Security Administration "decides more than 2 million claims for disability benefits each year," the need for standards that "contribute to the uniformity and efficiency of disability determinations * * * is particularly acute." *Yuckert*, 482 U.S. at 153. The court of appeals' decision, however, would introduce a broader inquiry about current economic circumstances into the fourth step of the sequential evaluation process, which otherwise entails a straightforward inquiry that focuses narrowly on the claimant's condition and its relationship to work she had previously done. Given the volume of claims the agency must handle, that burden should not be underestimated. See

[12] Even the decision below recognized (Pet. App. 16a) that, if a claimant is able to perform her previous work, it is singularly unlikely that the claimant will be unable to perform *any other kind* of work in the national economy.

Pet. App. 18a (Rendell, J., dissenting) (decision below will "wreak havoc with the evidentiary aspects of the administrative process").

The construction announced by the court of appeals, moreover, would itself yield absurd results. The court of appeals' construction is not limited to situations in which a claimant's past job has become obsolete. To the contrary, the court of appeals would preclude consideration of the claimant's ability to do her former work any time that job does not exist in "significant numbers" in the national economy, Pet. App. 8a, including cases in which the claimant's former position is available to her. Indeed, the court's holding would permit some individuals to *quit* their jobs and collect disability benefits instead—even though their employers want them to return—if the jobs do not exist "in significant numbers either in the region where such individual[s] live[] or in several regions of the country." *Ibid.* (quoting 42 U.S.C. 423(d)(2)(A)).

Finally, the court of appeals' absurdity argument fails because it overlooks the fact that the Commissioner's construction, by imposing a strict causation requirement, draws a sharp and necessary distinction between disability programs and programs concerned with the consequences of economic and technological change. As the Subcommittee on the Administration of the Social Security Laws explained in 1960, the Commissioner's rule precludes a claimant from receiving benefits if she has "become unemployed or remain[s] unemployed for * * * reasons other than disability" such as "technological changes in the industry in which the applicant has been employed." The rule thus reflects the fact that the "disability provisions are intended to benefit only those persons who are not working because of incapacity, and not those unemployed because of these other factors." *1960 Comm. Report* at 19. Even if that distinction may be "difficult for the public to understand," *ibid.*, Con-

gress has reaffirmed the necessity of making "a clear distinction between this program and one concerned with unemployment," *id.* at 20; 43 Fed. Reg. at 55,350. "Congress intended to distinguish sharply between unemployment compensation and the disability benefits provided by the Act." *Garcia*, 46 F.3d at 559. As the district court observed in this case, "[d]isability insurance provides for people who physically are incapable of performing the type of job they did in the past[;] it does not provide for people who lost their job." Pet. App. 28a.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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